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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,448	07/09/2001	Toni Ceccardi	CL001272	4232

25748 7590 02/10/2004

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EXAMINER

LI, RUIXIANG

ART UNIT PAPER NUMBER

1646

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/900,448	<b>Applicant(s)</b> CECCARDI ET AL.	
	<b>Examiner</b> Ruixiang Li	<b>Art Unit</b> 1646	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4,8,9 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,8,9 and 25-27 is/are allowed.
- 6) ☒ Claim(s) 24,28 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |                                                                                                                  |                                                                             |
|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) <u>8/12/03 &amp;</u>        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>12/3/03</u> | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicants' election of Group III, claims 4-6, 8-11, and 22-23, on December 1, 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Applicants' preliminary amendment filed on December 1, 200 has been entered. Claims 1-3, 5-7, and 10-23 have been canceled. Claims 4, 8, and 9 have been amended. Claims 24-29 have been added. Claims 4, 8-9, and 24-29 are pending and under consideration.

### ***Drawings***

3. The drawings filed on July 9, 2001 are accepted by the Examiner.

### ***Information Disclosure Statement***

4. The information disclosure statement filed on 08/12/2003 and 12/31/2003 has been considered by the Examiner.

### ***Objection to the Disclosure***

5. The disclosure is also objected to because it contains an embedded hyperlink (line 11 of page 10). Applicant is required to delete the embedded hyperlink. See MPEP § 608.01.

**Claim Rejections—35 USC § 112, 2<sup>nd</sup> paragraph**

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 24, 28, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 is indefinite because it is unclear what protein is to be made; the claim, as written, reads on any proteins produced by the cell.

In addition, claims 24, 28, and 29 are indefinite because each claim ultimately depends upon Claim 4. In Claim 4, part (d) is directed to a complementary nucleic acid sequence. It is unclear how one would be able to produce a polypeptide from the complementary sequence, or which of the several, short open reading frames encoded by the complement are intended.

8. The art of record (PTO-892) is considered pertinent to the present invention.

The cited databases teach a human homologue and orthologs in rabbit, rat, and pig. Specifically, Database Swiss-Prot, Accession No. P02790 teaches a human polypeptide with 97.9% identity to the polypeptide of SEQ ID NO: 2, whereas Database Swiss-Prot, Accession No. P20058, P20059, P50828 teach polypeptides with 77.8%, 71.2%, and 70.7% sequence identity to SEQ ID NO: 2, respectively.

**Conclusion**

9. Claims 4, 8, 9, and 25-27 are allowed. Claims 24, 28, and 29 are rejected.

**Advisory Information**

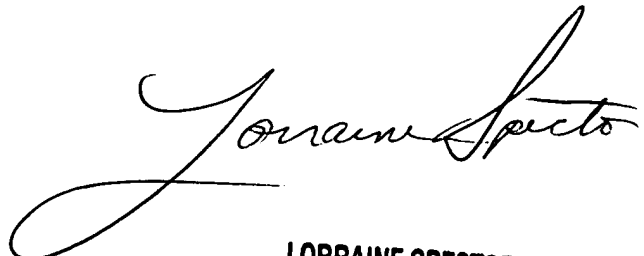
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruixiang Li whose telephone number is (571) 272-0875. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (571) 272-0871.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [yvonne.eyler@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Ruixiang Li  
Examiner  
February 6, 2004



**LORRAINE SPECTOR  
PRIMARY EXAMINER**